

EQC/LJIAC EMINENT DOMAIN SUBCOMMITTEE

May 4, 2000
Final Minutes

SUBCOMMITTEE MEMBERS PRESENT

Sen. Mack Cole, Chair
Rep. Kim Gillan
Rep. Gail Gutsche
Rep. Monica Lindeen
Rep. Dan McGee
Rep. Jim Shockley

Sen. Spook Stang
Rep. Bill Tash
Mr. Tom Ebzery
Ms. Julia Page
Mr. Jerry Sorensen

STAFF MEMBERS PRESENT

Krista Lee, EQC
Gordy Higgins, LJIAC
Judy Keintz, Secretary

VISITORS' LIST

Attachment #1

SUBCOMMITTEE ACTION

- Approved minutes of the April 12, 2000, Eminent Domain Subcommittee Meeting.
- Reviewed and revised the draft final report of the Eminent Domain Subcommittee.
- Set the next meeting date for July 27, 2000, in Helena.

I CALL TO ORDER AND ROLL CALL

CHAIRMAN COLE called the meeting to order at 1:00 p.m. Roll call was noted; all members were present (**Attachment #2.**)

▶ Adoption of Minutes

Motion/Vote: MR. SORENSEN MOVED THAT THE MINUTES OF THE APRIL 12, 2000, EMINENT DOMAIN SUBCOMMITTEE MEETING BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.

II ADMINISTRATIVE ITEMS

CHAIRMAN COLE explained that the draft final report would be available to the public for a 30-day period commencing on June 1st and ending on July 5th. The report will be available in hard copy format by request only. Ms. Lee will send a letter to the EQC interested persons lists to provide an opportunity to request the hard copy version of the draft final report. It will also be on

the website. Staff will provide Subcommittee members with the public comments received by the middle of July. The Subcommittee will determine the final recommendations at the July 27th meeting with final recommendations to the full EQC at its July 28th meeting. The full EQC will make final decisions and recommendations at the September 14th and 15th EQC meeting.

EQC CHAIRMAN CRISMORE emphasized that the eminent domain report is a draft report at this time. Given the time frame, today's meeting does not include time for public comment. Following distribution of the draft report, there will be a 30-day period for public comment. The comments will be reviewed and considered.

REP. GILLAN recognized the need to meet the time deadlines. She raised a concern that the last meeting was more like a public discussion wherein there was extensive public participation. She requested that some time be left for public comment if an issue was being addressed in which the public wished to participate. CHAIRMAN COLE agreed to the same.

III REVIEW DRAFT FINAL REPORT

► *Draft Final Report*

MS. LEE suggested the draft final report be placed into three volumes: 1) information, draft recommendations and legislation, 2) public comment, and 3) the handbook. The subcommittee agreed that this would be an acceptable format for the draft final report.

MS. LEE stated that **Rep. Juneau, HD 85**, of the Law, Justice, and Indian Affairs Committee requested that a statement be placed in the final report which stated that the study did not address eminent domain issues in regard to tribal lands. The Subcommittee agreed.

MS. LEE referred to page 10 of the draft report which addressed the frequency and distribution of condemnation actions in Montana. She explained that to obtain the needed information, letters were sent to various entities throughout the state. She questioned whether the list of participants should be included in the report. This list is not currently included. The Subcommittee felt the list did not need to be included. MS. LEE added that the cover letter could state that additional information would be available by contacting the EQC.

► **Chapter One - no changes**

► **Chapter Two**

MS. PAGE requested clarification of the amount 5/193 as shown in the table on page 30. She further noted that on page 38 there was a statement that Montana is among the states operating under a more liberal and therefore more enlightened view of eminent domain. She requested

clarification of the statement. MR. HIGGINS explained that this was a quote from several court cases that address the public use issue. One interpretation is use by the public, which is direct and physical use. The other interpretation is a public benefit. In the court case involving the Butte A&P Railroad Company, it was held that given the need for expansion in the state, the more liberal interpretation of the public use doctrine was necessary to allow for the public's benefit.

MS. PAGE questioned whether the statement was appropriate. The issue of appropriate public uses is an important area of discussion. The discussion should be expanded to include the different concepts. MR. HIGGINS noted that this was a narrative of the history of eminent domain cases. He agreed to review and clarify the statement.

REP. SHOCKLEY suggested that the word "expansive" be used instead of "liberal".

► **Chapter Three - no changes**

► **Chapter Four**

MS. PAGE remarked that public uses are viewed differently in other states. Some states hold that a public use includes a project that is used by the public while others, including Montana, hold that a public use is a use that benefits the public. The list gives people a privilege and under the very slimmest margin it is subject to challenge. A clearer explanation should be provided for people to understand Montana law in regard to public uses. The legislature has a right to create this list but there is a philosophy that goes with it. There have been choices made over time. This right is given to a lot of entities and some people question whether an enumerated use is truly a public use.

REP. TASH further noted that enumerated public uses have been confirmed in case law.

MS. PAGE remarked that eminent domain is a powerful tool and many states provide different ways to implement the process. It is her understanding that the public has the right to challenge the public interest nature of a project.

MS. LEE explained that the courts look at need and necessity in section 70-30-111, MCA. To a certain extent, this has been correlated with public interest. The list includes public uses. Public interest comes into play in other areas of the statute, 70-30-206, MCA.

REP. GUTSCHE stated that the Subcommittee has heard a lot of discussion about the differences between public use and public interest. This is confusing to the Subcommittee as well as the public. This matter should be addressed.

Mr. Petesch stated that he authored this section of the report. The title of this section is “Public Uses Enumerated” and that is why the public uses are listed. The discussion of necessity versus public interest takes place later in the chapter.

► **Chapter Five**

MS. LEE explained that this chapter reviews the entities that have the authority of eminent domain and it also includes information regarding the places in Montana Code where authority is provided. A matrix is provided on how eminent domain is exercised in other states. Mitigation and standards and specifications are addressed in this chapter. The case study on the Forestvale Interchange project is also included. The subcommittee did not suggest any changes.

► **Chapter Six**

MS. LEE remarked that this chapter includes a discussion on the type of interest that may be taken through eminent domain actions and definitions from statute. The panel discussion on possession of property is taken from the minutes. Right of reentry is also included in this chapter.

► **Chapter Seven**

MS. LEE noted that this chapter includes draft EQC findings and recommendations. The Subcommittee agreed to keep this information in a matrix format. Since the Final Report will be a product of the full EQC, the final and draft recommendations should be from the EQC.

► **Bill Drafts - 7030 and 7032 -**

Mr. Petesch remarked that LC 7030, **Exhibit 1**, and LC 7032 **Exhibit 2**, were drafted to implement one motion because staff needed more time to prepare the draft legislation. The first bill draft deals with the chapter of law specifically addressing eminent domain. The other bill draft deals with the remainder of the Montana Code. The two bill drafts could be combined. Both bills are non-substantive in nature.

MR. EBZERY questioned if the heading would be changed. **Mr. Petesch** explained that if the Subcommittee wanted to ensure that substantive provisions were not placed into the bill a title could be drafted to do so. LC 7032 includes references to the appropriate provisions in law wherever the authority to exercise eminent domain currently exists. The enumerated uses from

other locations were included in the list of public uses so that there would be one place where all public uses would be listed. This is accomplished with references back to the authority section contained in the list if there is a specific statute that limits the application. For example, an entity can only condemn for sewers if that entity is a city or town.

Motion: REP. MCGEE MOVED THAT LC 7030 AND LC 7032 BE MERGED INTO ONE BILL DRAFT.

Discussion

MR. EBZERY requested that the title be drafted to preclude substantive changes to the bill. REP. MCGEE accepted the request as a friendly amendment to his motion.

Vote: THE MOTION CARRIED UNANIMOUSLY.

► Bill Draft - 7031

MS. LEE stated that LC 7031, **Exhibit 3**, included the changes made during the last meeting. The term gross negligence was removed and there was a change made to Section 1.

Mr. Petesch explained that the paragraph which was changed by the subcommittee at the last meeting limited construction, use or maintenance of a project for a public use and the motion made by REP. SHOCKLEY was to ensure that an activity in the easement not related to the public use would provide that the servient tenement would not be liable unless the servient tenement's negligence or intentional act caused the damage.

SEN. STANG questioned whether this would address the situation wherein a landowner would be liable for a pipeline spill under the Superfund law.

Mr. Petesch noted that the draft legislation would not amend the current Superfund law. The landowner could be named a potentially responsible party. The landowner would be protected unless they were the cause of the injury.

► Bill Draft - 7033

MR. EBZERY questioned whether LC 7033, **Exhibit 4**, would make changes to current law. **Mr. Petesch** stated that under current law the property taken could only be used for the public use for which the property was condemned. There was a request that this be affirmatively stated in statute. Under Title 69, the current statute provides that a telephone or telegraph line could be run in conjunction with a pipeline. The Montana Supreme Court has interpreted that a fiber optic

cable is the modern version of the telegraph line. The condemnation order would provide the right to place the fiber optic cable and the right to inspect, maintain, and monitor the same.

MR. EBZERY remarked that the condemnation order may not contain this information. REP. SHOCKLEY noted that the condemning party would draft the order in a condemnation proceeding.

MR. EBZERY added that the judge could change the condemnation order. REP. SHOCKLEY stated that the order is agreed upon between the parties and the plaintiff then drafts the order.

Mr. Petesch stated that to make sure that existing condemnation orders were not affected, a prospective applicability clause or a savings clause could be added to the bill.

MS. PAGE contended that the draft legislation is appropriate and responds to concerns raised by landowners.

Mr. Petesch further explained that the order of condemnation includes the right to access the property for purposes of maintenance, monitoring, upgrading, etc. With respect to pipelines, the statute authorizing condemnation for pipelines and provides the right to run a telegraph or telephone line for purposes of the pipeline. The challenge was made that fiber optic is not enumerated as being needed for the use of a pipeline. The Court held that fiber optic is a new form of a telegraph or telephone line. Access is also granted for purposes of maintenance.

MR. SORENSEN questioned whether this may impact condemnation for highway purposes.

Nick Rotering, Montana Department of Transportation, explained that they take property in fee, not in easement. Also, they always use boilerplate language in the order stating that they are taking the property for highway purposes, which is fairly broad. He suggested that the bill be prospective in nature.

MR. EBZERY raised a concern that the judge may change the condemnation order. This could invite litigation.

Motion: REP. LINDEEN MOVED THAT LC 7033 BE ADOPTED.

SEN. STANG requested that a prospective applicability clause and a savings clauses be added to LC 7033. REP. LINDEEN accepted the amendment as part of her motion.

MS. LEE explained that the bill was drafted in response to a draft recommendation. Changes can be made before it becomes a final recommendation of the Subcommittee.

Vote: The motion carried.

► ***Findings and Draft Recommendations***

Motion: REP. LINDEEN MOVED THAT THE SUBCOMMITTEE RECONSIDER ITS ACTION IN REGARD TO THE DRAFT RECOMMENDATION ON THE WORK PLAN TASK OF NECESSITY/PUBLIC INTEREST.

REP. TASH spoke against the motion. It is important to clarify certain parts of the law but he maintained that current law is adequate.

MR. EBZERY, referring to LC 7034, **Exhibit 5**, stated that the term “public interest” is not defined. He questioned who would make the determination of public interest.

REP. LINDEEN stated that this could be further defined by the Legislature or left to the court to define. She would like more discussion from the Subcommittee on this issue.

Vote: The motion carried on roll call vote of 7 “yes” and 3 “no”. (Attachment 3)

REP. LINDEEN remarked that one of the biggest issues in eminent domain discussions is whether or not projects involving eminent domain are in the public interest. This bill, LC 7034, would set up another level for the court. Before property can be taken the condemnor would need to show, by a preponderance of the evidence, that the project is in the public interest. If the judge finds that the project is in the public interest, the condemnor shall show by preponderance of the evidence that public interest requires the taking based on certain findings. The bill gets to the heart of the public interest question before arriving at the second question, which is currently in statute.

MR. EBZERY noted that there is no definition of the term “public interest”. This would be left to the discretion of the condemnation judge. Another hurdle would be added for the condemnor. This would add an incredible amount of uncertainty to the eminent domain statute.

MS. PAGE maintained that the determination of public interest is a key element. This is the only place where the landowner has a chance to see whether or not the exercise of eminent domain is legitimate and worth taking someone’s private property against their will.

SEN. STANG asked **Mr. Petesch** to further clarify the additional considerations which would be added by the draft legislation. **Mr. Petesch** explained that under current statute, when the initial pleading is filed there needs to be a showing that the entity is on the list of public uses. Next it

must be shown that the taking of the property is reasonable, requisite and proper for the enumerated public use for which the exercise of power is being sought. There needs to be a showing that an offer of fair market value was made and that the landowner rejected the offer. The only thing contested at that point is whether the particular taking is reasonably, requisite and proper for the public use. There is a subsequent statute which addresses public interest. There is one case that states that some evidence needs to be submitted that the particular project is in the public interest. The draft legislation would require a separate finding, in advance, that the project is in the public interest. This would allow the court to determine whether a particular project was in the public interest.

SEN. STANG questioned whether this would apply to private enterprises only or whether it would also apply to government agencies. REP. LINDEEN noted that she had not made a distinction between the two.

SEN. STANG raised a concern that the highway department could run into some real problems with delays in construction projects. Any delays in spending federal funds for highway purposes may cause Montana to return the funds to other states. He would like to see a distinction between government projects and private interest projects. REP. LINDEEN stated that she would be willing to consider the issue. The 30-day public comment period may provide some input regarding a way to set up some direction to the court on the issue of public interest. Landowners need to be given an equal chance to protect their land. Current law does not provide for this.

MR. SORENSEN spoke against the draft legislation. He noted that there were no boundaries on the term public interest.

SEN. STANG questioned whether public interest was defined in code. **Mr. Petesch** did not recall a specific definition of public interest.

SEN. STANG questioned how the finding of fact was determined by the court. **Mr. Petesch** explained that the finding of fact would be made based upon the evidence presented. The condemnor would present the evidence and the condemnee would then need to rebut the evidence or to present stronger evidence on the other side of the issue.

Motion: REP. LINDEEN MOVED THAT LC 7034 BE INCLUDED IN THE DRAFT FINAL REPORT AS A DRAFT RECOMMENDATION.

REP. MCGEE spoke against the motion. This is the only bill presented that the Subcommittee did not have time to consider beforehand. This would abrogate the legislative responsibility for establishing policy in law including public interest.

Vote: The motion failed on roll call vote of 3 “yes” and 7 “no”. (Attachment 4)

REP. LINDEEN requested that there be a statement under findings to address the concern. She contended that many landowners do not feel that the current law is adequate.

Motion: REP. LINDEEN MOVED TO STRIKE THE FINDING UNDER THE WORK PLAN TASK OF NECESSITY/PUBLIC INTEREST WHICH STATES THAT CURRENT LAW IS ADEQUATE. THE NEW LANGUAGE WOULD STATE THAT THERE HAS BEEN CONCERN EXPRESSED BY THE PUBLIC THAT THE DEFINITION OF PUBLIC INTEREST IS NOT CLEARLY DEFINED.

MR. EBZERY spoke in opposition to the motion. This would be one more hurdle for the condemnor.

REP. SHOCKLEY maintained that public interest is not adequately defined in law.

SEN. STANG commented that he deemed the highway program to be in the public interest. The previous motion would have placed the highway program at risk. The term public interest has not been adequately addressed. The legislature needs to define the term.

Substitute Motion: REP. GUTSCHE MOVED A FINDING THAT CURRENT LAW IS INADEQUATE BECAUSE IT DOES NOT DEFINE PUBLIC INTEREST.

REP. MCGEE offered a friendly amendment stating that public interest is not specifically defined in statute. There is significant expression of public opinion regarding whether or not public interest should be defined in code.

REP. GUTSCHE accepted the friendly amendment.

Substitute Motion: REP. GUTSCHE MOVED A FINDING THAT PUBLIC INTEREST IS NOT SPECIFICALLY DEFINED IN STATUTES GOVERNING EMINENT DOMAIN.

MS. PAGE stated that this Subcommittee would be seen as being totally unresponsive to public input if it did not indicate in the findings that there is controversy over this issue.

Vote: The motion carried on roll call vote - 9 “yes” and 1 “no”. (Attachment 5)

Motion: REP. MCGEE MOVED A FINDING THAT EXPRESSED PUBLIC OPINION INDICATES THERE IS CONFUSION AND DISAGREEMENT OVER THE ISSUE OF PUBLIC INTEREST.

MR. EBZERY maintained that there is a disagreement over the public interest.

Substitute Motion: REP. MCGEE MOVED A FINDING THAT PUBLIC OPINION INDICATES THERE IS CLEAR DISAGREEMENT OVER THE ISSUE OF PUBLIC INTEREST.

Vote: The motion carried unanimously.

Motion: REP. GUTSCHE MOVED TO REOPEN THE MATRIX IN ITS ENTIRETY FOR CONSIDERATION OF CHANGES TO THE DRAFT RECOMMENDATIONS AND FINDINGS.

REP. TASH contended that everyone had more than ample opportunity to respond to the findings and recommendations.

MS. PAGE remarked that the Subcommittee wants to put out the best draft recommendations possible.

MS. PAGE provided the Subcommittee members with the following handouts: Mitigation Measures #1 (MEPA), **Exhibit 6**, Mitigation Measures #2 (State and Federal v. Private Land), **Exhibit 7**, Possession of Property, **Exhibit 8**, Burden of Proof, **Exhibit 9**, and Type of Interest Taken (Easement v. Deed), **Exhibit 10**.

REP. GUTSCHE explained that the handouts included information to add to or change draft recommendations or findings.

MR. SORENSEN maintained that the Subcommittee has already decided on draft recommendations which should go out to the public for comment. The handouts provided could be considered at a later time.

EQC CHAIRMAN CRISMORE remarked that information has been provided in a timely manner so that Subcommittee members were able to study and review the information before the meeting. It is premature for the Subcommittee to address the information just provided. This information could have been sent out earlier and the matter could have been added to the

agenda. The handouts provided to the Subcommittee need to be viewed as new information and handled through the 30-day comment period.

REP. GILLAN commented that some of the Subcommittee members were not aware that at the last meeting the findings and recommendations were being cast in stone. The reason this information was provided today is that at the last meeting there was a lot of legal information provided. Certain members were confused by the discussions at the last meeting and have now had a chance to review the information provided. At the last meeting, the audience was stacked in favor of attorneys and condemners.

REP. TASH maintained that the Subcommittee had gone the extra mile in obtaining public comment. He further added that comment periods cannot continue to be extended. It is counterproductive to start redrafting recommendations.

MS. LEE stated that the new material could be addressed at this meeting and then go out for public comment or it could be treated as written public comment received during the comment period. If this information became final recommendations, it would mean that the final recommendations were not considered by the public as draft recommendations.

REP. GUTSCHE remarked that the information needed to be addressed at this meeting so that the public would be able to comment on the same. She further noted that the last meeting was a public discussion more than a Subcommittee discussion and thus there was confusion on the part of members. The information provided has been discussed by the Subcommittee and most of the recommendations have come directly from the public.

REP. SHOCKLEY suggested that the handouts be placed in the record and then the Subcommittee could address the issue of including the information in their report at the next meeting.

MS. PAGE maintained that at the Billings meeting there were approximately 80 persons attending the public hearing and approximately 20 of the persons expressed their concerns about the issue of public interest. The last meeting was a very difficult meeting. It is important to have an open discussion on the issues raised.

REP. MCGEE noted that the matrix contains the draft recommendations as of today. The draft recommendations are not necessarily the same recommendations that will be submitted to the full EQC.

CHAIRMAN COLE summarized that public comment will be reviewed by the Subcommittee members by July 13th. Discussions and Subcommittee decisions on final recommendations will take place at the July 27th meeting.

MS. LEE stated the reason the subcommittee had to vote to reopen portions of the matrix was that draft recommendations that had already been voted on were being changed. On July 27th the Subcommittee will make decisions on final recommendations which have not been voted on at this time. Therefore, the subcommittee will not have to vote to open the matrix for discussion of final recommendations unless the final recommendation has been voted on previously.

Vote: The motion on reopening the matrix failed on roll call vote - 4 “yes” and 6 “no”. (Attachment #6).

Motion: REP. SHOCKLEY MOVED THAT THE DOCUMENTS PROVIDED BY MS. PAGE (EXHIBITS 6-10) BE ENTERED INTO THE RECORD AS AN APPENDIX.

MR. EBZERY questioned whether this should be limited to the five documents or whether the motion should be open for all additional information to be submitted.

REP. SHOCKLEY stated that by appending the documents to the record, the public would be able to comment on this information. The documents could also be viewed as comments by the Subcommittee.

MR. SORENSEN suggested that the documents provided by MS. PAGE be placed with the public comments received by the Subcommittee.

REP. SHOCKLEY maintained that is important for the public to have an opportunity to comment on this information which has been discussed during the meetings.

Vote: The motion failed on roll call vote - 5 “yes” and 5 “no”. (Attachment #7)

Motion/Vote: REP. MCGEE MOVED THAT THE DRAFT FINAL REPORT BE DISTRIBUTED TO THE PUBLIC AS EXPLAINED BY MS. LEE. The motion carried with REP. GUTSCHE, REP. LINDEEN and MS. PAGE voting “no”.

CHAIRMAN COLE stated that there would not be time for public comment at today's meeting. He requested that any written comments be provided to the Subcommittee.

Clint McRae, Rancher, provided written testimony, **Exhibit 11**, a mitigation report from the Tongue River Railroad, **Exhibit 12**, Miles City Fish Hatchery Impact Analysis Studies and

Proposed Mitigation Approach Proposed Tongue River Railroad, **Exhibit 13**, a memo from the Department of State Lands regarding Meridian mine—condemnation authority for rail spur, **Exhibit 14**, a memo from the Department of State Lands regarding Applications for Easement Proposed Bull Mountains Mine No. 1 Rail Spur, **Exhibit 15**, and a pamphlet entitled “Obtaining a Right-of-Way on Public Lands” from the US Bureau of Land Management, **Exhibit 16**. He remarked that he was under the impression that there would be a public comment period as stated in the sign posted in the meeting room. He requested that all the information be provided to Subcommittee members.

Steve Gilbert, Helena, also provided a written statement, **Exhibit 17**.

Jim Jensen, Montana Environmental Information Center, questioned whether public comment would be accepted at today’s meeting. CHAIRMAN COLE stated that public comment would not be accepted.

Jeanie Alderson, Billings, stated that people have driven 700 miles to attend today’s meeting under the impression that public comment would be allowed at the meeting. These people’s lives are impacted by the decisions of this Subcommittee. At the last meeting, industry representatives were present and were allowed to provide comment throughout the entire meeting. Today, with landowners present, the decision has been not to allow public comment.

CHAIRMAN COLE maintained that he made it clear that if time allowed prior to 5:00 p.m., public comment would be taken.

Mr. Jensen contended that it is EQC policy to allow for public comment at its meetings.

CHAIRMAN COLE noted that it is EQC policy that public comment is taken at the discretion of the EQC chairs and co-chairs.

REP. GUTSCHE recommended that 15 to 20 minutes of public comment be accepted from the few people who were still in attendance at the meeting.

CHAIRMAN COLE stated that the Handbook Workgroup could meet following adjournment. He opened the meeting to public comment.

Public Comment

Mr. McRae presented his written statement, (Exhibit 11).

Ms. Alderson stated that they reviewed the proposed maps which came out in the draft, supplemental and final EIS. They commented under MEPA and NEPA about the route.

Following publishing of the EIS, they received a 30-day notice that their land would be surveyed. The map provided showed that the route had been changed and went through a meadow and a pass. This was not included in the EIS. They asked the Service Transportation Board what could be done about a route change. There were no answers provided. The Legislature needs to address the eminent domain law and provide some recourse for landowners.

Mark Fix stated that he also received a 30-day notice from the Tongue River Railroad. The route had changed by over a half mile on his land. This was not included in the EIS. He has also received information from **Bill McKinney** who also received a 30-day notice from the Tongue River Railroad. In this notice they wished to survey a route known as the Western Alignment which is still unapproved by the Transportation Board. It states that there may have been some misunderstanding considering the surveying of more than one route for railroad. The Service Transportation Board has approved one routing, and the Tongue River Railroad is in the process of obtaining approval of a slightly more direct route across several ranches. There are Montana statutes authorizing the survey and there is a right to survey not only the route that has been approved but also other possibilities as to determine the most acceptable route.

Steve Gilbert, Helena, presented his written statement, (Exhibit 17).

Terry Punt, Birney, remarked that § 69-14-515 states that before any railroad corporation organized under the laws of any other state or territory of the United States shall be permitted to avail itself of the benefits of this section, such corporations shall file with the secretary of state a true copy of its charter or articles of incorporation. On July 30, 1998, he received a condemnation notice from the Tongue River Railroad, a limited liability company, not a corporation as stated in the law. The threat states that he was notified that the Tongue River Railroad Company, after having given the 30-day written notice, intended to enter upon the land set forth on Exhibit A. He does not own all the land in Exhibit A and could not sign away the rights to the land. The notice was sent out in 1998 and nothing has been done since that time. How long can this threat hang over their heads? The condemnor also has rights to sand, gravel, timber, etc. This is not adequately dealt with in the condemnation process.

IV ADJOURNMENT

There being no further business, the meeting was adjourned.

SEN. COLE, Chairman